

1 to say that?

2 MR. KIPNES: That is a  
3 extremely large assumption. Assume the  
4 moon is made of green cheese if you want  
5 him to.

6 BY MR. LEVY:

7 Q. Assuming that Mr. Crowley wrote  
8 this, does that impact on your conclusion  
9 that at least on the day he wrote it, he  
10 had no conflict?

11 MR. KIPNES: Objection to  
12 the form.

13 MR. MILLER: Objection to  
14 the form.

15 THE WITNESS: I don't see  
16 the conflict myself. Maybe there is a  
17 conflict. Maybe after I dwell on it to  
18 the same extent that you and your  
19 colleagues have dwelled on it, maybe I  
20 would come to a similar conclusion. I  
21 can't do it sitting here. I don't have  
22 that type of imagination.

23 BY MR. LEVY:

24 Q. How long would it take you to dwell,

1 sir, on the statement that Crowley thinks  
2 he has got a commitment that after the  
3 compromise plan is confirmed he would be  
4 reinstated and receive \$5,000,000? Isn't  
5 that plainly a conflict?

6 MR. KIPNES: Objection to  
7 the form of the question.

8 MS. KRUGMAN: Objection.

9 THE WITNESS: I can't do  
10 better than I have done. I have done  
11 the best I can for you. I can't do  
12 better.

13 BY MR. LEVY:

14 Q. Do you think it would be deceiving  
15 the Court to have a plan under which after  
16 confirmation Crowley would be reinstated  
17 with Cerberus and receive \$5,000,000?

18 MR. KIPNES: I would  
19 instruct the witness not to answer that  
20 question. This is not a Rule 2004  
21 examination. This is a deposition  
22 limited, as you have agreed, to the  
23 question of the pending motions  
24 regarding Crowley. And once you use the

1       word "plan," the question is beyond the  
2       scope and I would ask the witness not to  
3       answer it.

4                    MR. LEVY: Perhaps, I was  
5       unclear. I didn't mean the plan. I  
6       mean any plan.

7                    MR. KIPNES: Any plan. A  
8       plan of reorganization?

9                    MR. LEVY: You have made it  
10      clear that we don't want to deal with  
11      this.

12     BY MR. LEVY:

13     Q. Look at the last sentence of this  
14    page, number 65.

15     A. The last sentence says, "If this is  
16    not our deal, please just send this  
17    letter" --

18     Q. I'm sorry, I mean the one before  
19    that.

20     A. "Also, Cerberus will indemnify me  
21    for all of my legal fees, plus pay me the  
22    difference between what I ultimately  
23    receive from Coram by way of bonuses and 11  
24    million 2."

1       Q. Doesn't that link Cerberus and Coram  
2       in a way that plainly is a conflict if  
3       Cerberus is paying Crowley for work he did  
4       for Coram?

5                   MR. KIPNES: That's about  
6                   the forty-seventh time.

7                   MR. MILLER: Is this a  
8                   hypothetical if this was an agreement  
9                   between the parties?

10                  MR. GODNICK: I didn't hear  
11                  the question.

12                  MR. LEVY: I will withdraw  
13                  that question.

14                  BY MR. LEVY:

15                  Q. I am not at the moment, at the  
16                  moment, suggesting that Cerberus did or did  
17                  not agree to this. I'm focusing on your  
18                  reaction to the fact that if Crowley wrote  
19                  this, that at the time he wrote it he felt  
20                  he had a commitment that Cerberus would pay  
21                  him the difference between what he got from  
22                  Coram by way of bonuses, which he claims he  
23                  is entitled to, and \$11,000,000. Isn't  
24                  that a conflict?

1                   MR. KIPNES: Asked and  
2         answered. I lost count how many times.

3                   THE WITNESS: It may be. I  
4         don't see it offhand. Maybe there is a  
5         conflict.

6         BY MR. LEVY:

7         Q. Let's move along.

8         A. I would have to know more about the  
9         facts and the personalities and the  
10        context. But to suggest that two people  
11        are engaging in conflict which borders on  
12        the improper, I don't want to do by way of  
13        speculation. I don't think that's fair. I  
14        don't think it's appropriate and it's  
15        highly hypothetical. Ask them and then you  
16        and the Court can decide that.

17         Q. The next document is what appears to  
18        be a letter signed by Dan Crowley addressed  
19        to Steve Feinberg, CRX 71, 72 and 73.

20                   (Trustee-20, a letter dated  
21        May 8, 2002, marked for identification.)

22         BY MR. LEVY:

23         Q. Will you read that exhibit. This  
24        document has "Redacted" on these pages,

1 presumably, by Mr. Crowley's lawyer. Some  
2 of it is the same. Some of it is different.

3 A. What is the question?

4 Q. You have never seen this before, did  
5 you?

6 A. No.

7 Q. In the first sentence, Mr. Crowley  
8 and, I think, we can assume he wrote it  
9 because that is his signature, says, "I  
10 have been thinking a great deal about our  
11 dinner last week because, while I have  
12 suspended it, I still haven't formally  
13 ended my contract with Cerberus."

14 Is that consistent with your  
15 understanding?

16 A. Yes. That is what he is in effect  
17 saying, I don't have an active contract,  
18 but I have these claims. I don't want to  
19 tear up the contract until we resolve those  
20 claims.

21 Q. And the contract might be reinstated,  
22 that's the implication?

23 A. If I ever get out of Coram.

24 Q. If I ever get out of Coram.

1                   Look at the last page, the  
2     third paragraph from the bottom. Last  
3     page, 73.

4                 A. Starting, "In fairness to myself"?

5                 Q. That's the paragraph, but that is  
6     not what I was going to ask you about. The  
7     next-to-the-last sentence, fourth line near  
8     the end. "Steve, I also am anxious that  
9     unforeseen events sometime overtake good  
10    intentions. You could get hit by a bus and  
11    be gone. Cerberus could get bought out, or  
12    whatever. The point is that then I would  
13    be left with nothing."

14                 Does that suggest to you  
15    that they have a secret agreement that  
16    would die if Feinberg was hit by a bus?

17                 MR. KIPNES: Objection to  
18    the question. Calls for speculation.

19                 THE WITNESS: I don't know  
20    what kind of agreement they had. I  
21    don't know. I can't guess. I will not  
22    guess, no point to it.

23    BY MR. LEVY:

24    Q. You testified earlier, I believe,

1       that you often acted on your impressions of  
2       people. What is your impression of that  
3       sentence?

4 A. Well, having an impression of a  
5 person and having an impression of a  
6 sentence is two different things. I can  
7 see the person in front of me, his facial  
8 expressions. I can't see anybody in front  
9 of me. I don't know these people.

10 Q. Moving along to the 10-Q.

11 (Recess taken, 2:39 p.m.)

12 (Back on the record, 2:46)

13 p.m.)

14 BY MR. LEVY:

15 Q. The next document. The next  
16 document is a Form 10-Q for the period  
17 ended March 31st, 2002.

18 (Trustee-21, a Form 10-Q,  
19 marked for identification.)

20 BY MR. LEVY:

21 Q. This is the Form 10-Q filed by Coram  
22 for the quarter ending June 30, 2002.

23 MR. KIPNES: What I was  
24 handed is a cover page and an excerpt

1           from the Form 10-Q for the period ended  
2           June 30, 2002, and a cover page and an  
3           excerpt for the Form 10-Q for the period  
4           ended September 30, 2002.

5                           MR. LEVY: That is exactly  
6                           and completely correct.

7                           MR. KIPNES: Okay.

8                           BY MR. LEVY:

9                           Q. Now, I take it, Mr. Adams, you  
10                          participated in the preparation of both the  
11                          quarterly report for the quarter ended  
12                          June 30 and September 30 of 2002?

13                          A. Correct.

14                          Q. And in the first one, which is for  
15                          the period ended June 30, looking at the  
16                          second page and the second paragraph from  
17                          the bottom above the heading there, it says  
18                          "Mr. Crowley and Cerberus agreed to suspend  
19                          their contract and all related obligations  
20                          immediately after the Bankruptcy Court's  
21                          denial of the second joint plan of  
22                          reorganization on December 21st, 2001. The  
23                          contract remains suspended through  
24                          August 16, 2002."

1           A. Yes.

2           Q. It was your understanding that in  
3       August that the contract had not yet been  
4       terminated, but was only suspended?

5           A. Correct.

6           Q. Did you make any inquiry of  
7       Mr. Crowley or anyone else as to when they  
8       intended to terminate their contract?

9           A. No. I talked to my counsel about  
10      it. They explained what they were doing.  
11      I said they. That meant Crowley and  
12      Cerberus; that they were continuing to  
13      suspend until they could reach some  
14      accommodation on the amount of money that  
15      Crowley claimed that Cerberus owed them.

16           Q. Did they explain to you if they  
17      didn't reach that accommodation that they  
18      could just reinstate the contract?

19           A. They didn't go into that, no.

20           Q. Would that be your understanding?

21           A. I have not looked at the contract.

22           Q. Of the word suspend, would that be  
23      your understanding?

24           A. It may be. I don't know.

1 Q. Which counsel explained that to you?

2 Mr. Bressler? Mr. Devine?

3 A. I don't know. We worked together.

4 It's a pretty big operation. It's not an  
5 operation controlled only by myself. I  
6 have a lot of people there.

7 Q. A lot of people you rely on?

8 A. All those executives, fifteen  
9 executives, beside Crowley and people in my  
10 office. I'm just one person.

11 Q. What percentage of your time, your  
12 professional time since you have been  
13 appointed, roughly, have you devoted to the  
14 affairs of Coram.

15 MR. BEATIE: Objection.

16 Totally irrelevant. Ridiculous.

17 THE WITNESS: I can tell you  
18 it's fairly substantial; and don't be  
19 misled by my timesheets because I am  
20 notorious and always have been for not  
21 writing things down on timesheets. I  
22 don't do that.

23 To answer your question, if  
24 you are asking the question how much

1 actual time as distinguished from  
2 timesheets time, I would say twenty-five  
3 percent.

4 BY MR. LEVY:

5 Q. Twenty-five percent of your total  
6 time?

7 A. Yes.

8 Q. Can you tell me actual time, not  
9 timesheet time, roughly, how many hours a  
10 month do you devote to your entire  
11 professional activities?

12 A. Well --

13 MR. KIPNES: Objection.

14 A. This is going to embarrass my  
15 colleagues.

16 MR. KIPNES: Objection to  
17 the form of the question. When you say  
18 "professional," what do you mean by  
19 that? Do you mean as an attorney? Do  
20 you mean --

21 A. Well, let me answer.

22 MR. KIPNES: As a Trustee?

23 A. I generally come into the office  
24 before nine o'clock. I do not go out to

1       lunch. Maybe once a month I will go out to  
2       lunch. I generally stay until four  
3       o'clock. I generally work on Saturdays. I  
4       generally work on Sundays. So, if you  
5       added that up, I don't know, it comes to  
6       about sixty hours a week, something like  
7       that. So, if you take the sixty hours --

8           Q. Could I stop you at sixty hours? If  
9       you work from 9 to 3, that is six hours; 9  
10      to 4, that is seven hours times five.

11           MR. GODNICK: He said he  
12       comes in before nine.

13           A. I work at night, too. I know you  
14       are going to get me in trouble with these  
15       questions because nobody here can spend the  
16       amount of time that I have spent. Nobody  
17       can do that. I don't expect anybody. I  
18       don't expect you. I don't expect my  
19       colleagues. I don't ask them to do it. That  
20       happens to be my work ethic.

21           Q. That is, roughly, you say sixty  
22       hours a week?

23           A. I would think sixty hours.

24           Q. What percentage, if you know,

1 roughly, of Crowley's time is spent on  
2 Coram?

3 A. All I can tell you is that any time  
4 that I have been there or call him, he  
5 either answers my call or returns the call  
6 almost right away. I don't know. I hope  
7 it's a lot.

8 Q. Have you ever investigated -- have  
9 you ever asked him how much time he  
10 spends on --

11 A. Yes. He says he is generally here.

12 Q. Where is "here"?

13 A. Denver. He goes home on the  
14 weekend. He has an apartment in  
15 Sacramento. He is entitled to go home for  
16 the weekend.

17 Q. He has told you that he spends most  
18 of his time in Denver?

19 A. Yes.

20 Q. Have you ever asked any of the  
21 executives you have talked to whether that  
22 is true?

23 A. Well, I don't think I have ever  
24 asked them that way. I think I have talked

1 to Mr. Marabito who is right below him and  
2 he indicated that he never has any difficulty  
3 discussing matters with Mr. Crowley.

4 Q. That wasn't my question. My  
5 question was that while he is in Denver --

6 A. I was assuming that he just walks  
7 into his office.

8 Q. That is your assumption. That's not  
9 based on anything Marabito told you?

10 A. I have not checked on him, no, nor  
11 have I checked on Barry Bressler or  
12 Wil Kipnes or Joe Devine. I just don't do  
13 that. It's just not my nature to do that.

14 Q. Now, the 10-Q, this is now for the  
15 period ended September 30. We have  
16 something new. In the first paragraph on  
17 page 2.

18 A. "Effective August 1st 1999, Mr.  
19 Crowley"?

20 Q. Skip down to the last sentence.  
21 "Mr. Crowley and Cerberus agreed to suspend  
22 their contract."

23 A. Mr. Crowley and Cerberus have  
24 advised the Chapter 11 Trustee that such

1 contract has been terminated and that no  
2 payments have been made by Cerberus to  
3 Mr. Crowley during 2002."

4 Q. Is that true? Did they advise you  
5 of that?

6 A. They did not advise me directly.  
7 Crowley did, but not Cerberus. Cerberus  
8 may have advised my attorney's, but not me.  
9 I did not talk to Cerberus.

10 Q. Did your attorney's ever tell you  
11 whether or not Cerberus had advised them to  
12 that effect?

13 A. I can't say that they told me that  
14 that was my impression.

15 Q. Under what circumstances did  
16 Mr. Crowley tell you that they had  
17 terminated their contract?

18 A. When we were going over this document.  
19 We did it with --

20 Q. "This document", meaning the 10, the  
21 draft of the 10-Q?

22 A. Yes. We would review these documents  
23 by conference call.

24 Q. And when he said to you we have

1 terminated, we Crowley and Cerberus, have  
2 terminated their agreement, did you ask  
3 whether you could look at the documents  
4 evidencing the termination?

5 A. No, I did not.

6 Q. Have you ever asked him?

7 A. No.

8 Q. You just totally relied on  
9 Mr. Crowley telling you the truth?

10 A. Correct.

11 Q. And you never called Cerberus to say  
12 is that correct, that it's terminated?

13 A. I never called Cerberus.

14 Q. Do you know the terms of the  
15 termination agreement, assuming there is  
16 one?

17 A. I have not seen it. I don't know.

18 Q. If the termination agreement  
19 provided that Crowley preserved his right  
20 to make claims and sue Cerberus even after  
21 the termination, would you view that as a  
22 termination?

23 MR. KIPNES: Objection to  
24 the form of the question.

1                   THE WITNESS: I just don't  
2                   know. I can't answer that question.

3     BY MR. LEVY:

4     Q. Would that give you some concern as  
5     to whether there was a conflict of interest  
6     if Mr. Crowley preserved the right in the  
7     so-called termination agreement to sue  
8     Cerberus?

9                   MR. KIPNES: Objection to  
10                  the form. Asked and answered.

11                  MR. BEATIE: I want a  
12                  termination agreement and general  
13                  release? Is that what you are asking,  
14                  without saying it in some many words,  
15                  because it sounds too stupid?

16                  THE WITNESS: Give me the  
17                  question again, please.

18                  (Question read back.)

19                  THE WITNESS: I have not  
20                  seen the agreement. I don't know the  
21                  arrangement. Offhand, I don't think  
22                  there is -- I can't answer that.

23     BY MR. LEVY:

24     Q. When Crowley told you that the

1 agreement had been terminated, at least,  
2 did you understand that meant that his  
3 claims against Cerberus had finally been  
4 resolved?

5 MR. KIPNES: Objection.

6 MR. GODNICK: Objection.

7 THE WITNESS: He didn't tell  
8 me. He didn't tell me as such. We were  
9 going over this in a conference call  
10 regarding this document. My guess is  
11 that sentence was read by somebody and  
12 there was no objection. I did not focus  
13 on the difference between termination  
14 and suspension.

15 BY MR. LEVY:

16 Q. You never asked Mr. Crowley is it  
17 correct that you have terminated your  
18 agreement with Cerberus, correct?

19 A. As such, no, I did not ask him that  
20 question.

21 Q. Who else was on the phone call?

22 A. I thought I just answered that  
23 question. Mr. Bressler, Joe Devine.

24 Q. To your recollection, was there

1 anybody else on the call?

2 A. There may have been.

3 Q. But you have no recollection?

4 A. No, I don't.

5 Q. The next document which will be  
6 Exhibit 23 is a letter dated, 22, is a  
7 letter from Scott Schreiber, the attorney  
8 for Mr. Crowley to Mr. Barry Bressler dated  
9 October 3, 2002, showing a copy to both  
10 Daniel Crowley and to you, Mr. Adams.

11 (Trustee-22, a letter dated  
12 October 3, 2002, marked for  
13 identification.)

14 BY MR. LEVY:

15 Q. Mr. Adams, did you receive a copy of  
16 this letter?

17 A. I believe I did.

18 Q. At the top of the second page,  
19 Mr. Schreiber says that Mr. Crowley has --  
20 "While Mr. Crowley has no desire to renew  
21 an Employment Agreement which to date  
22 remains unperformed in so many ways on the  
23 debtor's side," did you understand this as  
24 a threat by Mr. Crowley to quit as CEO?

1           A. I didn't interpret it as such.

2           Q. You did not?

3           A. No.

4           Q. Did it subsequently come to your  
5           attention that Mr. Crowley or, at least,  
6           his lawyer felt that this was a notice of  
7           termination of the Coram agreement?

8           A. It did not come to my attention that  
9           I can recall.

10          Q. When did you begin negotiating with  
11         Mr. Crowley over the terms of his contract  
12         which was due to expire at the end of  
13         November?

14          A. I would say October. That is a  
15         guess.

16          Q. About the time of this letter?

17          A. Yes. It must have been a little bit  
18         before. This letter is dated October 3rd  
19         and it reflects the situation that had  
20         already occurred. So, I would guess,  
21         maybe, September, late September. That  
22         ties in with that letter from the financial  
23         advisor about crisis managers and things  
24         like that. It was all happening about that

1 time.

2 Q. The letter begins, "I understand  
3 that you and Mr. Crowley have recently  
4 spoken about Mr. Crowley's role at Coram  
5 after his contract expires on November 30,  
6 2002."

7 I assume Mr. Bressler  
8 imparted to you what conversation he had  
9 with Mr. Crowley?

10 A. He kept me up-to-date. I talk to  
11 Mr. Bressler several times a day.

12 Q. And what did Mr. Bressler tell you  
13 about that conversation that is referred to  
14 in the first sentence where he spoke to  
15 Mr. Crowley about the contract expiration?

16 A. One of the things that Mr. Bressler  
17 told me was that he could not be considered  
18 the CEO after that time under the new  
19 contract. That was one of the  
20 understandings, so that we had to develop a  
21 title that would conform to that requirement,  
22 but yet not disturb the employees, the  
23 customers and all the other people.

24 Q. Mr. Bressler explained why he

1 couldn't have the title of CEO?

2 A. I think he did. I can't tell you  
3 what it is offhand; something to do with  
4 recent legislation. I can't tell you for  
5 sure.

6 Q. You mean the Sarbanes-Oxley?

7 A. Yes.

8 Q. Did Mr. Bressler tell you, apart  
9 from that issue, whether there were other  
10 issues?

11 A. Yes.

12 Q. What were the other issues?

13 A. The first issue was whether we  
14 should have any contract at all. Should we  
15 do it? Should we seek somebody else?  
16 Should I take it over?

17 After talking with the  
18 financial advisors, we concluded that given  
19 the fact that we wanted to file a plan as  
20 quickly as possible, it would be best to  
21 keep them during that period for fear that  
22 it would undermine the value of the  
23 company. That, I would say, is probably  
24 the major issue.

1                   The next issue was  
2 compensation. I told Mr. Bressler,  
3 although I didn't have to, that I was not  
4 one for elaborate compensation. We then  
5 got into the question of the bonuses. I  
6 gave Mr. Bressler my idea. I told him that  
7 something would have to be done with the  
8 huge claim that Crowley had under the  
9 original contract; that we had to make  
10 every effort to reduce that claim because  
11 that could seriously effect the distribution.

12                 Q. You said that you didn't have to  
13 tell Mr. Bressler something about an issue  
14 involving compensation, something about an  
15 issue involving compensation.

16                 A. I didn't have to tell him.

17                   MR. KIPNES: He said he did  
18 not have to tell Mr. Bressler that he is  
19 not one for spending a lot of money,  
20 elaborate compensation.

21                   THE WITNESS: He knew that.

22                 BY MR. LEVY:

23                 Q. In connection with the issue of  
24 whether you should seek someone else, were

1 you advised by anyone specifically don't  
2 seek someone else? Keep Dan Crowley?

3 A. I think we went over this this  
4 morning.

5 MR. BEATIE: Objection.

6 BY MR. LEVY:

7 Q. Will you answer that for me?

8 A. Nobody said keep Mr. Crowley. We  
9 were told that disturbing that management  
10 pattern at that time would not be a very  
11 good idea. We are going to file a plan.  
12 It would undermine the credibility. It  
13 would shake the confidence of the customers,  
14 all that.

15 Q. And that came from who, Scott Victor?

16 A. He was one of them.

17 Q. Who else?

18 A. I thought we went into that this  
19 morning; that I will talk to Pearlman and  
20 the guy at --

21 Q. You talked to Pearlman in May. I'm  
22 up to October.

23 You said you needed to make  
24 one of the issues that Crowley relayed,

1       that Bressler related to you was the issue  
2       of whether we should keep him. At about  
3       that time, a little before October 3rd or  
4       after October 3rd, who gave you advice on  
5       the issue of keep him or not other than  
6       Scott Victor, if anybody?

,       7       A. Well, the other guy with Scott  
8       Victor. I can't remember his name.

9           Q. Bemiss?

10          A. Sam is the first name.

11          Q. Anybody else?

12          A. Plus the people on the outside.

13          Q. Which people?

14          A. Mr. Pearlman.

15          Q. I'm sorry, again. Let's restrict it  
16        this way. Between October 1st --

17          A. Did I talk to Pearlman after October  
18        the first? I don't think I did. I'm not  
19        sure.

20          Q. Who did you talk to other than  
21        Bemiss after October 1st on the issue of  
22        replacing Crowley? Who did you talk to,  
23        other than Bemiss, Victor, Bressler, if  
24        anybody?

1       A. I can't think of anybody offhand. I  
2       think there were certain discussions, but I  
3       can't tell you offhand.

4       Q. You said that you recognized it was  
5       a problem that you had to deal with  
6       Mr. Crowley's claim, Mr. Crowley's claim  
7       for bonuses.

8       A. Against Coram; not against Cerberus,  
9       right.

10      Q. Did you ever consider that one way  
11     to deal with that claim was to litigate it  
12     and say we don't owe you anything?

13      A. That's one way. We talked about  
14     that at great length. We thought that  
15     extensive litigation at that particular  
16     time would undermine the value of the  
17     company.

18      Q. Did you come to a conclusion as to  
19     the likely result of the litigation,  
20     whether it would undermine it or not?

21      A. I don't think so. I can't recall  
22     that we did.

23      Q. So you decided not to litigate  
24     without knowing whether you had a winning

1 case because you simply didn't want  
2 extensive litigation, is that a fair  
3 characterization?

4 MR. KIPNES: I would object.

5 Way beyond the scope.

6 THE WITNESS: Also, expense  
7 of the litigation. That's a big item  
8 with us.

9 BY MR. LEVY:

10 Q. Would that additional -- do you  
11 agree with what I said before -- read the  
12 last question, if you would.

13 (Testimony read back.)

14 A. That was one of the elements, but  
15 not the only element. You have to keep in  
16 mind that in the fall of 2002, we had  
17 litigation with R-Net; we had litigation  
18 with Price Waterhouse; we had litigation  
19 with the IRS. We had one other case that I  
20 can't think of. These litigations were  
21 costing Coram and the creditors a great  
22 deal of money and the equity holders, too.  
23 I was concerned that we would be creating  
24 the impression that we were using this as a

1 litigation mill to generate fees and things  
2 of that sort. I thought that that would  
3 not be the right signal to be sending the  
4 people who were interested in this. So, to  
5 the extent that you could resolve disputes  
6 peacefully, it was in the best interest of  
7 everyone and most especially the Bankruptcy  
8 Court. So, that was a very important  
9 factor to make.

10 Q. Did you consider at that time that  
11 you could have sold the company and simply  
12 reserved the litigation claims?

13 A. We did. Yes, we did.

14 Q. Why wasn't that a good solution?

15 A. We didn't think we would succeed.

16 We explored that.

17 Q. Who is "we"?

18 A. Our group, Mr. Bressler, myself,  
19 Mr. Marabito. My team, we talked about it  
20 all the time.

21 Q. Who else did you rely on for that  
22 decision beside the people you just named?

23 MR. GODNICK: Objection.

24 Beyond the scope.

1                   MR. KIPNES: Whether to sell  
2                   the company?

3                   THE WITNESS: That was my  
4                   judgment and I take responsibility for  
5                   that.

6     BY MR. LEVY:

7         Q. At this time, how big was, how big  
8         did you understand that Mr. Crowley's claim  
9         against Coram to be?

10        A. For some reason, the filing of  
11        \$11,000,000 comes into my mind. I'm not  
12        sure of that.

13        Q. Does \$11,200,000 sound about right?

14        A. Could be.

15        Q. Did you fear at that time that if  
16        Mr. Crowley wasn't satisfied he would quit?

17        A. I didn't fear it, though. It was a  
18        concern because I knew that I could always  
19        go out and try to run the company myself,  
20        but it would unsettle the situation. I  
21        didn't think it was a sought after solution,  
22        but I didn't fear it.

23        Q. You were concerned about it?

24        A. Concerned, yes.

1           Q. Here we are on October 3rd and  
2       Schreiber says to Bressler, with a copy to  
3       you, let's discuss these things. What's  
4       the next thing that happened as far as you  
5       now recollect in these discussions about  
6       settlement?

7           A. I think the next thing was that I  
8       told Mr. Bressler that this was a  
9       peculiarly good assignment for him to deal  
10      with Mr. Crowley's lawyer. He seemed to  
11      get along reasonably well with him, didn't  
12      always agree with him. He had many  
13      discussions with him and he got the work to  
14      try to hammer out the best deal possible  
15      and to bring it back to me.

16           Q. That was performing a, largely, a  
17       business function rather than a legal  
18       function when he went out to hammer out a  
19       deal?

20           A. Combination business/legal.

21           Q. Next is a letter dated October 18  
22       from Mr. Schreiber to Mr. Bressler with a  
23       copy to Crowley. It's Trustee number 6512  
24       through 14 inclusive. It's dated

1      October 18. That would be number 23.

(Trustee-23, a letter dated

MR. KIPNES: The letter is

5 from Mr. Steven K. Sims who, I believe,

6 is a partner of Mr. Schreiber's.

7 MR. LEVY: You are correct.

8 MR. KIPNES: With a copy to

9 Schreiber.

10 BY MR. LEVY

11 Q. Do you recall receiving this letter

12 or a copy of this letter?

13 A. NO.

14 Q. Do you recall Barry Bressler

15 discussing the contents of this letter with

16 you?

17 A. I think he came in and told me about

18 it.

19 Q. Did he tell you, for example, that

20 Mr. Crowley asserted now a claim of 17.3

21 million dollars against Coram?

22 A. I heard that, yes. I heard that

23 figure.

24 Q. What was your reaction when you

1 heard that?

2 A. I almost hit the roof.

3 Q. Does that mean you got angry?

4 A. No. I don't get angry.

5 Q. Explain to me what "hit the roof"

6 means in Adams jargon.

7 A. It sounded pretty high to me.

8 Q. Sounded ridiculous?

9 MR. KIPNES: Objection to  
10 the form.

11 A. It was awfully high.

12 Q. What did you tell Barry about it?

13 A. I hardly had to tell him anything.

14 He knows me and my attitude about figures  
15 like that. I doubt if I had to tell him.

16 He said, "I know that you will never even  
17 consider anything like that." I said, "You  
18 are absolutely right" or something to that  
19 effect.

20 Q. Now, I notice in here in paragraph 9  
21 that you are being requested -- this is,  
22 obviously, a request on behalf of Crowley  
23 for you to agree to use your best efforts  
24 to promptly seek dismissal of any

1 derivative claim.

2 A. That's what he was asking.

3 Q. Is that the first time in the  
4 negotiations you recall that he asked to  
5 get a release?

6 A. I think so. I can't recall.

7 Q. It's a fact, isn't it, that much  
8 later you offered formally a deal to  
9 Crowley in which you would not only use  
10 your best efforts, but you agreed in any  
11 plan that you would provide he would get a  
12 release?

13 A. I don't recall that precisely.

14 MR. KIPNES: Objection to  
15 the form.

16 A. I would have to look at the document.

17 Q. Did you consider that the claim,  
18 given Judge Walrath's opinion, everything  
19 she said, what you needed to consider, the  
20 claim against Crowley had any value at all?

21 MR. KIPNES: Objection to  
22 the form of the question. I instruct  
23 the witness not to answer. Now, we are  
24 talking about the proposed resolution of

1           the proposed derivative complaint which  
2           the judge held a mediation on  
3           September 25, 2002, about and, I  
4           believe, that is way beyond the scope of  
5           today's deposition and I would urge the  
6           judge not to get into any discussions  
7           about his views on the proposed  
8           derivative complaint.

9       BY MR. LEVY:

10      Q. The reason judge -- since he made a  
11     speech, you ultimately are here proposing  
12     to keep Crowley; you are doing that  
13     partly -- part of the plan you have proposed  
14     would be to give him a release. I want to  
15     know, coming to the conclusion you did, on  
16     the motion you are trying to succeed on  
17     whether you considered the value of the  
18     claim against Crowley?

19           MR. KIPNES: Objection to  
20     that question. It misstates the  
21     Trustee's motion. The Trustee's motion  
22     that we are here about today is not  
23     dependent on a release, has nothing to  
24     do with a release, stands or falls on

1           its own merits. It's not tied to  
2           anything else.

3                         THE WITNESS: I adopt that.

4           I think what Mr. Kipnes said is correct.  
5           I think what Mr. Kipnes has said is my  
6           understanding and I adopt that as my  
7           understanding.

8           BY MR. LEVY:

9           Q. Let me ask you this question: If  
10          you want to refuse, fine. I need to ask  
11          the question to get an answer or a refusal.  
12          Did you, in considering what kind of deal  
13          you were going to make with Crowley, consider  
14          the value of the claim that the estate had  
15          against Crowley?

16          A. Yes.

17                         MR. KIPNES: Objection.

18           BY MR. LEVY:

19          Q. Can you give me a number as to a,  
20          what value that was?

21          A. I can't give you a number.

22          Q. Was it -- did you consider the fact  
23          that both Goldin and Judge Walrath said he  
24          had caused \$13,000,000 worth of damage as a

1 result of the first plan?

2 MR. GODNICK: Objection to  
3 the form of the question, the  
4 characterization of the judge's opinion  
5 and Jay Goldin's report.

6 MR. KIPNES: I would urge  
7 the witness not to answer.

8 THE WITNESS: We considered  
9 the matter generally. I can't give you  
10 figures.

11 BY MR. LEVY:

12 Q. Who is the "we"?

13 A. Our team.

14 MR. KIPNES: Objection to  
15 the question. I will instruct him not  
16 to answer the question. Now, you are  
17 into my work product and he is not  
18 answering that question. Next question.

19 BY MR. LEVY:

20 Q. As of the time you received this  
21 letter, was it your understanding, this  
22 October 18 letter, Exhibit 23, that  
23 Schreiber was proposing two separate deals,  
24 that is, something, to stay on for six

1       months and something in the plan or that he  
2       was proposing one deal that would cover  
3       both issues?

4           A. Well, you said at the time I  
5       received this letter. I did not receive  
6       this letter. Mr. Bressler merely told me  
7       about it.

8           Q. Based on what he told you, what was  
9       your understanding?

10          A. I don't think I can react to your  
11       question. I didn't know what Schreiber had  
12       in mind. I didn't know he was trying to  
13       try to extract from us as much as he could.  
14       I was going to resist it. That was  
15       paramount in my mind.

16          Q. Did you ask Bressler whether he was  
17       proposing two deals, one an up-front  
18       payment?

19          A. No, I did not.

20          Q. Did you ever come to an understanding  
21       as to whether Crowley, through Schreiber,  
22       was proposing one deal, that is to say, pay  
23       me something now and pay me something on  
24       confirmation or two separate deals, just

1 pay me something now and we will worry  
2 about the rest later?

3 MR. KIPNES: Asked and  
4 answered. I object.

5 THE WITNESS: I don't think  
6 we segmented our thinking to that  
7 extent. At least, I didn't know that.  
8 I didn't segment my one deal, two deals.

9 BY MR. LEVY:

10 Q. You thought of it as one deal?

11 A. Yes. I wanted to resolve it.

12 Q. Next document is -- it's not right  
13 for you to comment to the witness. You  
14 know that.

15 Next exhibit is a Scott  
16 Schreiber letter. This time it's dated  
17 November 8, 2002. It's from Scott  
18 Schreiber to Barry Bressler. 6412 is the  
19 number on bottom right.

20 (Trustee-24, a letter dated  
21 November 8, 2002, marked for  
22 identification.)

23 BY MR. LEVY:

24 Q. Do you remember seeing a copy of

1       that letter?

2           A. I don't think I saw a copy of this  
3       letter, but I think Mr. Bressler advised me  
4       of his receipt of the letter.

5           Q. What did he advise you?

6           A. If they had given him official  
7       notification pursuant to the agreement of  
8       termination.

9           Q. The "they" being Crowley?

10          A. And his counsel.

11          Q. You understood that as of November 8  
12       Crowley had terminated his contract with  
13       Coram?

14          A. He had given us notice of termination.

15          Q. Do you distinguish that from  
16       terminating?

17          A. There is a slight difference.

18          Notice of termination, he called it notice  
19       of termination.

20          Q. Now, knowing that he had given a  
21       notice of termination, did you run out and  
22       say we better get someone to replace him?

23          A. We were thinking about that all the  
24       time.

1           Q. I mean specifically in response to  
2       Bressler telling you that he had gotten a  
3       notice of replacement, of termination.

4           A. We didn't segment our discussions  
5       now that we got this, do we do that? We  
6       were talking about this -- this was a major  
7       issue with us. What are we going to do  
8       with Crowley? Are we going to have a  
9       contract? Suppose we don't have a  
10      contract? What are the implications?  
11      Every day we talked about this. He would  
12      come in. Where are you on this issue? We  
13      would discuss it. We didn't segment the  
14      way your question would suggest. I can't  
15      answer that question.

16           Q. When Bressler comes in and says he  
17      is terminated, that caused no particular  
18      ripple in your thinking?

19           A. It didn't surprise me.

20                   MR. KIPNES: Objection.

21                   THE WITNESS: It didn't  
22      surprise us that they had sent the  
23      termination notice.

24      BY MR. LEVY:

1           Q. Why?

2           A. Because if he was a good negotiator,  
3           he wanted to say to Mr. Bressler in effect  
4           I want you to know we are terminating the  
5           agreement. It's important for us to have a  
6           new agreement in place.

7           Q. When you were negotiating the  
8           transition agreement, which is the subject  
9           of next Monday's motion, is it fair to say  
10          that it was always contemplated that that  
11          was part of negotiating a consensual plan  
12          which would have Crowley's agreement as to  
13          the amount of money he was to be paid on  
14          confirmation?

15                   MR. KIPNES: Objection to  
16                  the question. The document speaks for  
17                  itself. Mischaracterizes the terms of  
18                  the document. Misstates the record.

19                   MR. LEVY: I would object to  
20                  your putting a document in front of the  
21                  witness.

22                   THE WITNESS: I asked for  
23                  it.

24                   MR. KIPNES: If you object,

1           I won't let the witness see the  
2           document.

3         BY MR. LEVY:

4         Q. Is it your understanding that the  
5           agreement that is the subject matter of  
6           your motion, the transition agreement, was  
7           entered into in contemplation of trying to  
8           negotiate a consensual plan with Crowley  
9           among others which would release his claims?

10           MR. KIPNES: Objection to  
11           the form of the question.

12           THE WITNESS: We had that  
13           very much in mind. We had that very  
14           much in mind.

15         BY MR. LEVY:

16         Q. Will you adopt the word contemplation?

17         A. Yes.

18         Q. This is 6515, which is a letter  
19           dated November 26, 2002, from Barry  
20           Bressler to Scott Schreiber and Steven  
21           Sims.

22           (Trustee-25, a letter dated  
23           November 26, 2002, marked for  
24           identification.)

1 BY MR. LEVY:

2 Q. Do you recognize this as a letter  
3 that Bressler sent to Crowley's lawyers?

4 A. I recall that Dan, that Barry  
5 discussed this with me. I don't recall  
6 specifically if he showed me this draft.

7 Q. Based on this discussion, this had  
8 your approval?

9 A. No question about that.

10 Q. Now, at the time you authorized this  
11 letter, is it fair to say that your state  
12 of mind was that you wanted to work out a  
13 deal with Crowley, ask him what his state  
14 of mind was, let him tell us instead of  
15 stumbling around like a blind man  
16 suggesting answers to questions when you  
17 know they are wrong --

18 MR. LEVY: I would like to  
19 incorporate my prior comment about your  
20 comments.

21 MR. BEATIE: 101.

22 BY MR. LEVY:

23 Q. So far as we can see, this letter  
24 does not propose, November 26th is the date

1 of the letter, any transition payment.

2 A. Yes.

3 Q. At this point, you had not yet  
4 agreed to give Crowley a million dollars  
5 transition payment?

6 A. There is something here. Hold on a  
7 second.

8 Q. Perhaps you are looking at paragraph  
9 6.

10 A. Yes. That's a blank.

11 Q. At that point, you were  
12 contemplating that you were going to  
13 propose reduction in his claims similar to  
14 those suggested in the Goldin report?

15 A. Yes.

16 Q. Except for the first and second fail  
17 plan confirmations, right?

18 A. Right.

19 Q. What was your understanding at that  
20 time as to the reductions that would be  
21 made based on these criteria?

22 A. Reductions in the bonuses?

23 Q. Reductions in his claims, yes.

24 Looking at paragraph 6.

1                   MR. KIPNES: Again, I  
2                   object. Beyond the scope of this  
3                   deposition.

4                   THE WITNESS: I can't tell  
5                   you as of November 26th. This was a  
6                   continuing negotiation. I can't stop it  
7                   at each date and tell you where we were.  
8                   That is beyond me. That's why I asked  
9                   Mr. Bressler to negotiate it. He was  
10                  telling me, generally, but I can't tell  
11                  you date by date.

12                  BY MR. LEVY:

13                  Q. The next is a letter dated  
14                  December 2nd, 2002. But I note that it  
15                  says 2003.

16                  MR. KIPNES: On the  
17                  document.

18                  MR. LEVY: We will correct  
19                  that, with the understanding that that  
20                  could not be.

21                  BY MR. LEVY:

22                  Q. That is a letter, Bates numbers  
23                  Trustee 6528 through 6529.

24                  (Recess taken, 3:58 p.m.)

1 (Resumed 4:07 p.m.)

2 MR. LEVY: I want to state

3 on the record something that you missed.

4 The Equity Committee is withdrawing its

5 Notice of Deposition of Steven Feinberg

6 in the 30(b)(6) Notice of Deposition of

7 Cerberus this Friday. We reserve at

8 some future time to take his deposition.

9 We are not going to take it at this

10 time.

11 THE WITNESS: Okay.

12 BY MR. LEVY:

13 Q. Let's look, then, at -- Mr. Adams,  
14 can you tell me why you caused a Motion for  
15 Authority to Reject Executory -- Mr. Adams,  
16 why did you authorize the filing of a  
17 Motion to Reject the Executory Contract  
18 with Mr. Crowley?

19           A. I know we discussed it. I can't  
20        answer that question right now. I don't  
21        have a recollection why I did it, but I did  
22        it.

23 Q. Was it part of your negotiations  
24 with Crowley?

1           A. Probably, yes.

2           Q. Now, I would like to put in front of  
3        you the transition agreement which is the  
4        subject matter of your motion, at least.  
5        It's dated December 24, 2002. It does not  
6        have Bates numbers because it came, the  
7        copy I have came from the exhibit. I think  
8        it's Exhibit D to your motion.

9           A. Is this the twenty-fourth?

10          Q. Yes.

11          A. I got it.

12          Q. Now, first, will you agree with me  
13        that though Crowley's title was changed,  
14        actually your understanding was that he was  
15        to render, essentially, the same services  
16        to Coram as he had up to that point?

17          A. Pretty much, yes.

18          Q. Pretty much. Is there any change at  
19        all?

20          A. I can't think of anything sitting  
21        here. That's why I used the expression  
22        pretty much.

23          Q. And in that agreement which, by the  
24        way, you signed yourself --

1 A. I did.

2 Q. And Dan Crowley signed?

3 A. He did. I assume he signed it  
4 himself. His name is on it.

5 Q. You agreed to seek court approval of  
6 it?

7 A. Yes.

8 Q. That was on December 24th?

9 A. I think that's the date, yes.

10 Q. But you didn't attempt to seek court  
11 approval until January 24th, a month later.  
12 Is that correct?

13 A. I think that's correct.

14 Q. Why did you wait a month to seek  
15 court approval?

16 A. Well, you are in the holiday season.  
17 I don't think it was advert as such. It  
18 was mainly because of other things.

19 Q. Well, what other things, sir?

20 A. The holiday season.

21 Q. The holiday ended December 31st to  
22 January 2nd. You waited three weeks to  
23 file it.

24 A. I think I was away. I think I was

1 away. I think so.

2 Q. Did you need to be there to file it?

3 A. No. I needed to be there to  
4 authorize it. My recollection is I was  
5 away.

6 Q. I'm sorry, sir, you signed it. You  
7 needed further authorization to file a  
8 motion, is that your testimony?

9 A. They did not want to proceed  
10 without, yes.

11 Q. Who told you that?

12 A. I think Mr. Bressler.

13 Q. You agreed in this transition  
14 agreement in paragraph 7 to pay, subject to  
15 court approval, to pay Crowley a stay in  
16 performance bonus of a million dollars?

17 A. Correct.

18 Q. So, that's for staying for six  
19 months?

20 A. Roughly. Approximately.

21 Q. So that raised, in effect, raised  
22 his salary for the next six months by a  
23 million dollars, is that right?

24 A. In effect.

1           Q. You also agreed to raise his salary  
2         to 80,000 a month from 48,000 a month?

3           A. About fifty, yes.

4           Q. Why did you do that?

5           A. Because we had to. I didn't do it  
6         willingly. That was the negotiation. If I  
7         had my way, I would have kept everything  
8         the same.

9           Q. Why didn't you just say no?

10          A. I could have said no, but for the  
11         reason that I have already mentioned, a  
12         number of times. I thought it was for the  
13         benefit of the creditors, the equity  
14         holders and the institution.

15          Q. Did Crowley say I will quit if you  
16         don't --

17          A. Would he have said it?

18          Q. Did he say it?

19          A. Yes. That was the implication; if  
20         we didn't meet the terms, he was ready to  
21         leave.

22          Q. Did he actually say that to you at  
23         any point?

24          A. He didn't negotiate it. His

1 attorney negotiated it. Mr. Schreiber.

2 Q. Did his -- were you part of these  
3 negotiations at all?

4 A. I did not talk to Mr. Schreiber. I  
5 didn't talk to his attorney.

6 Q. So, you never face-to-face  
7 negotiated with Crowley with respect to  
8 this transition agreement, is that correct?

9 A. I talked to Crowley about it, yes.  
10 He made it clear that he would leave, yes.

11 Q. You did this in the face of a threat  
12 that he was going to quit?

13 A. I don't believe -- he didn't deal  
14 with me with threats. That's not what  
15 happened. He had the position -- he took  
16 the position that he, more than anyone  
17 else, had suffered financially as a result  
18 of what had gone on for two or three years.  
19 He didn't get any bonuses. His salary,  
20 according to him, not according to me, was  
21 minimal for a person taking that  
22 responsibility. He had not gotten the  
23 bonuses that he was entitled to; he had  
24 incurred substantial legal fees; he was

1 unhappy financially, not with the job he  
2 was doing. He didn't think he had been  
3 treated fairly financially and he created  
4 the impression with me -- he didn't say you  
5 either do it or I walk. He never treated  
6 me that way. Very few people have, I might  
7 say. In fact, I can't recall in my  
8 lifetime that anybody ever has done  
9 anything like that. But, he made it pretty  
10 clear that there would be no continuation.

11 Q. That was your understanding anyway  
12 from what he said?

13 A. Yes.

14 Q. In the course of these negotiations  
15 with him, did he talk about reimbursement  
16 for counsel fees as part of the deal?

17 A. Specifically, yes, he did.

18 Q. So, he was claiming a right to  
19 indemnity from the corporation because he  
20 had incurred counsel fees as a result of  
21 his activities?

22 A. He didn't use the expression  
23 indemnity. Maybe you could characterize it  
24 that way.

1 Q. Did he say who the legal fees were  
2 payable to?

3 A. We assumed that it was Schreiber.

4 Q. Did you ever see Schreiber's bills?

5 A. No.

6 Q. Do you know whether Mr. Bressler  
7 did?

8 A. He would have to show them to us.

9 You see, two hundred thousand dollars is a  
10 cap. He doesn't get the two hundred  
11 thousand dollars. It's a maximum, as I  
12 remember it.

13 Q. It says, "not to exceed two hundred  
14 thousand."

15 A. That's right.

16 Q. What do you feel -- what did you at  
17 that time feel or what do you feel now  
18 entitled him to recover legal fees from  
19 Coram?

20 MR. KIPNES: Objection to  
21 the form of the question.

22 THE WITNESS: What?

23 BY MR. LEVY:

24 Q. What, why did you feel he was

1       entitled to recover legal fees from Coram?

2                    MR. KIPNES: Objection to

3                   the form of the question.

4                   THE WITNESS: I didn't feel  
5                   that he was entitled to recover  
6                   anything. I thought that we, I thought,  
7                   quite frankly, he was more interested in  
8                   the tax implications because he could  
9                   have just said I want a signing bonus of  
10                  a million dollars. So, he divided that  
11                  for his benefit to eight hundred plus  
12                  two hundred. I didn't query why he  
13                  wanted that division, but I assumed it  
14                  was for tax reasons. I can assure you  
15                  that we made the best deal we could  
16                  under the circumstances unless we wanted  
17                  to lose him. That was a possibility  
18                  which weighed on my mind a great deal.

19        BY MR. LEVY:

20        Q. Did you at about this time before  
21        you put your name on here go back to any of  
22        your advisors and consult them again about  
23        the damage that might occur to the company  
24        if you did lose him?

1           A. Not again. No, I did not.

2           Q. I take it -- didn't you consult any  
3           crisis managers to see whether they thought  
4           there would be any damage at that time?

5           A. No.

6           Q. How did the salary get up to \$80,000  
7           from \$48,000?

8           A. Bargaining. That's all. Was I  
9           happy about it? No. That's an easy one.

10          Q. Are you happy about it now?

11          A. No. I'm not happy anytime about  
12          salaries that are that high. Do you have  
13          to pay those salaries in this climate of  
14          ours? I suspect yes. I regret it, but I  
15          think that's a fact of life.

16          Q. Did you at this time ever consult a  
17          compensation expert to determine what the  
18          appropriate level of salary was for a man  
19          of a company this size in this industry?

20          A. Yes. I had talked about that  
21          considerably all during the last half of  
22          2002.

23          Q. To who? To what compensation  
24          expert?

1           A. The compensation people. By the  
2 way, I was the compensation person at  
3 Albert Einstein Medical Center. I worked  
4 with the consulting firm and I was always  
5 unhappy about the level of their salaries.  
6 But, there is no doubt that that is what  
7 the advisors and the consultants were  
8 telling us.

9           Q. What consultant person did you talk  
10 to at about the time you agreed to this  
11 transition agreement?

12          A. I didn't talk to anyone at that  
13 time.

14          Q. When was the time prior to that that  
15 you had, prior to the signing of this  
16 transition agreement, that you had talked  
17 to a compensation expert about appropriate  
18 levels of compensation for a man in  
19 Crowley's position?

20          A. All during the last half of 2002.

21          Q. Name a compensation expert who you  
22 talked to all during the last half of 2002.

23          A. I didn't talk to a compensation  
24 expert. I talked to the people at Albert

1 Einstein that were dealing with these  
2 people almost on a month-to-month basis.

3 Q. Who did you talk to at Albert  
4 Einstein?

5 A. Jack Adler, Jr., Chairman of the  
6 Board; Ralph Roberts, who had served with  
7 me who was the retiring CEO of Comcast.

8 People like that that.

9 Q. What did Jack Adler say about this  
10 compensation?

11 A. "I can understand how you feel. I  
12 don't know what you can do about it.  
13 That's the going rate."

14 Q. So, he said what is the going rate?

15 A. What we were talking about is 650,  
16 750, 850.

17 Q. Did he say it was a going rate to  
18 give in addition to the 80,000 a month  
19 which is -- did he say 80,000 a month, a  
20 million dollars a year was the going rate?

21 A. No. I thought you were talking  
22 about the 80,000 a month. He did not -- I  
23 never talked to him about the million  
24 dollars.

1           Q. The \$80,000 a month is roughly --  
2       it's \$960,000?

3           A. That right.

4           Q. Did he say that was the going rate?

5           A. No. He didn't say specifically that  
6       \$960,000 was the going rate.

7           Q. Did anybody who you consulted during  
8       the last half of 2002?

9           A. Well, the discussions didn't -- it  
10      didn't take the form of your questions.  
11      They talked about, generally, what was  
12      going on in the health care industry and  
13      the equipment industry.

14           Q. Have you ever estimated the cost to  
15      Coram of the additional benefits, other  
16      than salary and a million dollar stay  
17      bonus, the cost to Coram of such things as  
18      health, dental and disability insurance,  
19      million dollars of whole life coverage,  
20      transportation allowances, tax preparation  
21      costs? Did you ever add all that up?

22           A. I did. I'm appalled at the expense.  
23      Don't forget all of those limits were in  
24      place when I came into the company.

1           Q. But the contract had expired.  
2           A. That's true. But it's very  
3           difficult to ask somebody to stay on and  
4           say, by the way, all of these things are  
5           gone now. Obviously, they are not going to  
6           do it. You wouldn't do it in your law  
7           firm. Nobody around this table would do it  
8           if all of a sudden the senior partner of  
9           some of these law firms would call their  
10          partners in saying starting January 1st we  
11          are not covering health, not covering life,  
12          we are not covering your travel expenses,  
13          we are not covering this and that. What  
14          would they do? Would they say if you don't  
15          do that, we are going to leave? I don't  
16          know what they would do. They would be dam  
17          unhappy.

18          Q. Tell me about your bargaining back  
19          and forth where he wanted more than a  
20          million dollars.

21          A. Yes.

22          Q. You wanted to pay him less than  
23          that. Tell me about the time when it came  
24          together at around a million dollars. What

1 did you discuss then?

2 A. I can't tell you. Those discussions  
3 were by Mr. Bressler and his attorney.

4 Q. Did Mr. Bressler at some point say  
5 to you this is the best I can do?

6 A. He did. We had to make a judgment.

7 I was very unhappy.

8 Q. Did you think, maybe, you ought to  
9 try once more to say I'm not going to pay  
10 you a million dollars, Dan?

11 A. I don't think that would have served  
12 any purpose.

13 Q. You didn't do it?

14 A. I did not do it.

15 Q. Let me ask you a question. You said  
16 you had to do this. Did you ever  
17 contemplate at the time you signed this  
18 what if Mr. Crowley had said or had left  
19 you the impression that I will leave unless  
20 I get a \$2,000,000 transition bonus, would  
21 you have accepted that?

22 MR. KIPNES: Objection to  
23 the question.

24 THE WITNESS: No. That is

1           hypothetical. I wouldn't have. I had  
2           reached the top. I think all of the  
3           elements beside the money, it was very  
4           difficult for me to argue. They would  
5           be decreases in compensation.

6       BY MR. LEVY:

7           Q. Would it be fair to say that the  
8           only --

9           A. As far as the monthly payment is  
10          concerned, it's higher than he was getting,  
11          but don't forget, he had not received an  
12          increase for three and one-half years, I  
13          believe. Everyone else in the company had  
14          received an increase. If you factor the  
15          ten percent that they were getting, 10, 10,  
16          ten, it seems like 30, but it's more like  
17          40, because one is on top of the other.  
18          So, he was not getting very much more than  
19          his colleagues/compatriots were getting.

20           Q. Did you consider at the time that he  
21          was not only getting \$80,000 month for the  
22          this transition period which for a year  
23          would have been a million dollars, but for  
24          that same six months he was getting another

1 million dollars so, in effect, his salary  
2 for the six months of 2003 was not \$80,000  
3 a month, but \$160,000 a month?

4 MR. KIPNES: Objection to  
5 the form of the question.

6 BY MR. LEVY:

7 Q. Did you consider that?

8 A. Yes. You are really talking to the  
9 choir really now. I'm in complete  
10 agreement that these figures are high, but  
11 I'm also aware that unless you meet those  
12 figures, you are not going to have a  
13 negotiation and you are not going to have a  
14 contract.

15 I think it's too high to pay  
16 an associate \$150,000 a year, but what am I  
17 going to do about it? Sure, it's too high.  
18 It's outrageous. I have an associate here.  
19 It will do me a lot of good to stand on the  
20 table and say that. If you don't pay them,  
21 they all walk out. You have to be  
22 realistic.

23 Q. Will you agree with me that this  
24 transition agreement, part of Exhibit 2,

1 was entered into in contemplation of a  
2 supplemental agreement that was entered  
3 into about a month later?

4 MR. KIPNES: Objection to  
5 the form.

6 BY MR. LEVY:

7 Q. Do you agree with that?

8 A. That's correct.

9 Q. Did you consider by yourself or with  
10 your counsel that this transition agreement  
11 was filed on December 24th?

12 A. It wasn't file then.

13 Q. It was signed on December 24th; the  
14 need to file a Form 8-K to advise the  
15 investing public that a transition  
16 agreement had been executed.

17 A. Did I do that? No. That is a  
18 matter which would be up to Mr. Devine.

19 Q. Have you ever discussed with him why  
20 they didn't file an 8-K at that time?

21 A. I did not discuss that with him.

22 Q. On January 3rd, a letter was written  
23 by Mr. Bressler to Mr. Schreiber. It has  
24 numbers that I fear I can't read because

1 your Bates number went off the page. We  
2 think it is 651720.

3 MR. KIPNES: We can read 20  
4 and 19 -- that is 60520 and 6519. That  
5 is 6520. Let's mark it Trustee X. Is  
6 that okay? Mark it Trustee next  
7 exhibit. I don't care.

8 MR. LEVY: I'm talking about  
9 for -- I will mark it Trustee 8,000  
10 because that is past your numbers. 8001  
11 and 8002.

12 (Trustee 26, a letter dated  
13 January 3, 2003, marked for  
14 identification.)

15 BY MR. LEVY:

16 Q. Trustee Exhibit 26 is a letter dated  
17 January 23rd, 2003. I'm sorry,  
18 January 3rd, 2003. It's on Schnader  
19 stationery. It is addressed to Scott  
20 Schreiber and it has a Barry Bressler  
21 signature block. I have now marked 8000  
22 and 8001. Have you seen that before today?

23 A. I think I did.

24 Q. Did you approve it?

1 A. I did.

2 Q. The first -- I would ask you to look  
3 at the last sentence of the second  
4 paragraph.

5 A. Last --

6 Q. Paragraph 2 on the first page on  
7 page 8000.

8 MR. KIPNES: Do you mean the  
9 second paragraph or the paragraph  
10 numbered?

11 MR. LEVY: I mean the second  
12 un-numbered paragraph.

13 THE WITNESS: "This letter  
14 will serve to reflect the intent."

15 BY MR. LEVY:

16 Q. Read that to yourself. Have you  
17 read that paragraph?

18 A. I have.

19 Q. The second sentence says, "This  
20 Settlement Agreement is being negotiated  
21 and finalized in connection with the  
22 Transition Agreement."

23 A. Yes.

24 Q. Did you authorize that provision?

1           A. I did.

2           Q. And the proposal at this point  
3        which, I assume, you authorized is that  
4        Coram would pay Crowley an additional  
5        \$2,000,000, is that correct?

6           A. Correct.

7           Q. Correct?

8           A. Correct.

9           Q. The total he would get is three  
10       million dollars?

11          A. That right.

12          Q. And in the second paragraph, you  
13        said that, "the Trustee will in turn seek  
14       to provide Dan with the fullest release  
15       approved by the Bankruptcy Court of all  
16       proposed derivative and related claims."

17          A. Correct.

18          Q. Do you know whether that provision  
19       changed in the next -- you didn't sign this  
20       exhibit.

21          A. No.

22          Q. You signed a subsequent?

23          A. Yes.

24          Q. Do you know whether that provision

1 said that you would seek --

2 A. I don't recall.

3 Q. Did you approve -- well, you  
4 approved the whole thing?

5 A. Yes.

6 Q. Let's now go to -- here, again, the  
7 numbers seem to be completely blocked out.  
8 The second page. This is a letter dated  
9 January 7, 2003. The second page appears  
10 to have number 65 -- let's mark this as we  
11 did the prior one. I will call this  
12 Trustee 8003 and Trustee 8004.

13 (Trustee-27, a letter dated  
14 January 7, 2003, marked for  
15 identification.)

16 THE WITNESS: This one I  
17 have seen. Is that the question?

18 BY MR. LEVY:

19 Q. I will adopt that.

20 A. Yes.

21 Q. I notice in paragraph 2 that the  
22 provision about releasing Dan Crowley from  
23 proposed derivative claims has changed from  
24 "will seek to release him" to "will release

1 him."

2 A. Yes, I see that.

3 Q. Did you approve that change from the  
4 prior draft?

5 A. I did.

6 Q. Why?

7 A. I did it pursuant from advice from  
8 Barry Bressler.

9 Q. Barry told you that Crowley wouldn't  
10 go along if you didn't put that in?

11 A. I think he said it would be -- yes.

12 Q. Did you ever talk to Crowley about  
13 it?

14 A. Did I? No, I did not. I did not  
15 negotiate this. This was handled by  
16 Mr. Bressler. I have complete confidence  
17 in him. He is an outstanding bankruptcy  
18 lawyer. I gave him the guidelines and I  
19 was not happy about it, as I have said a  
20 number of times, as to the amounts here.

21 Q. You still are not happy?

22 A. Still not happy about it. I think  
23 they are high amounts, but I think that the  
24 hourly charges by lawyers are too high.

1 I'm not happy about them.

2 Q. Did you sign this on or about

3 January 7?

4 A. I did.

5 Q. So you were in town on January 7.

6 Did you sign it some other place?

7 A. I can't tell you that. I don't  
8 recall that.

9 Q. I hand you -- can you explain why  
10 you waited until January 4th, 24th, which  
11 is two-and-a-half weeks after January 7th  
12 to file the application to approve the  
13 transition agreement?

14 A. My vague recollection is I was away.  
15 But I can't -- I'm sure I was away in  
16 January, but I can't give you the dates. I  
17 looked in my pocket for my diary. I don't  
18 have it. I know I was away. In fact, you  
19 were away and I remember talking to Don,  
20 your colleague, and he told me you were  
21 away. So that's why I'm sure. He wanted  
22 to know why I wasn't going away and I told  
23 him I was, indeed, going away. If you wait  
24 a second, I can give you the dates.

1 Q. You can tell me the days you were  
2 away?

3           A. I think I might. I went away on --  
4       I was away on the 11th of January. I left  
5       on the 11th, 12, 13, 14, 15, 16, 17 and  
6       18th.

7 Q. Can you explain to me, sir, why in  
8 the application or Motion for Approval of  
9 the Transition Agreement you did not  
10 disclose the existence of the supplemental  
11 agreement which is, it says here, was  
12 finalized in connection with the transition  
13 agreement?

14 MR. KIPNES: Objection to  
15 that question.

19 BY MR. LEVY:

20 Q. The next document is a Form 8-K  
21 filed on January 14 by Coram. We will mark  
22 that.

23 (Trustee-28, a Form 8-K,  
24 marked for identification.)

1 BY MR. LEVY:

2 Q. You participated in the preparation  
3 of this Form 8-K, would that be correct?  
4 That was filed on January 24th, not the  
5 14th.

6 A. That's right. It says January 24th.

7 Q. Did you participate in the  
8 preparation of this Form 8-K?

9 A. Yes.

10 Q. You approved it?

11 A. Well, you say approved it. I didn't  
12 object to it.

13 Q. And it reveals under Item 5 that as  
14 a Chapter 11 Trustee, you have filed a  
15 motion to approve the transition agreement,  
16 is that correct?

17 A. It says that.

18 Q. And it does -- and it does not -- it  
19 does not disclose that by January 24th you  
20 had already signed a supplemental agreement  
21 executed in connection with the transition  
22 agreement to pay, in which you offered to  
23 pay Dan an additional \$2,000,000, did you?

24 MR. GODNICK: Objection.

1       This goes more to a motion to remove  
2       this particular Trustee than it does to  
3       the Crowley retention/termination  
4       issues.

5                    MR. KIPNES: It doesn't say  
6       that, does it? I assume we can all  
7       agree it doesn't say it.

8       BY MR. LEVY:

9                    Q. Why wasn't that included?

10                  MR. KIPNES: Objection.

11                  THE WITNESS: I can't tell  
12       you. I'm not a securities lawyer. I  
13       can't tell you that.

14       BY MR. LEVY:

15                  Q. Did you ever discuss it with  
16       anybody, that question?

17                  A. No, I did not discuss that with  
18       anybody.

19                  Q. In retrospect, sir, do you feel that  
20       your motion to approve the transition  
21       agreement which is up next Monday should  
22       have disclosed the supplemental agreement  
23       executed in connection with it?

24                  MR. KIPNES: Objection to

1           the question.

2                         THE WITNESS: That is a  
3                         legal question. I defer to  
4                         Mr. Bressler. I don't know the answer  
5                         to that.

6     BY MR. LEVY:

7                         Q. Did you ever discuss that with him?  
8                         A. I don't recall.

9                         MR. LEVY: I would like to  
10                        take about a five-minute break. I think  
11                        we are about done.

12                         (Off the record, 4:28 p.m.)  
13                         (Back on the record, 4:32  
14                         p.m.)

15     BY MR. LEVY:

16                         Q. Mr. Adams, let me refer for a moment  
17                         again to the supplemental agreement  
18                         executed by you on January 7.

19                         A. Correct.

20                         Q. You called it a supplemental  
21                         agreement. Did you consider it a letter of  
22                         intent for a supplemental agreement?

23                         MR. KIPNES: Objection to  
24                         the form.

1                   THE WITNESS: I didn't  
2                   characterize it.

3                   BY MR. LEVY:

4                   Q. Has Crowley ever signed that  
5                   January 7 letter, Exhibit 22, 27?

6                   A. Address that question to  
7                   Mr. Bressler.

8                   Q. You don't know?

9                   A. I don't know the answer to that. I  
10                  assume that he did. I'd rather ask  
11                  Mr. Bressler who knows.

12                  Q. When was the last time you talked to  
13                  Dan Crowley?

14                  A. I was in Denver last week.

15                  Q. When were you out there with  
16                  Mr. Crowley?

17                  A. February 6 and February 7.

18                  Q. February 6 and 7 you were there?

19                  A. Yes.

20                  Q. Did you at that point discuss the  
21                  additional settlement agreement which we  
22                  have marked as Exhibit 27?

23                  A. No.

24                  Q. Never came up?

1           A. The context of the meeting was quite  
2           different. It was an operational meeting;  
3           what they were doing, what the plans were  
4           and things of that sort. We didn't get  
5           into this subject.

6           Q. Who accompanied you to that meeting?

7           A. I think Joe went out with me.

8           Q. The lawyer?

9           A. Yes.

10          Q. Joe Devine?

11          A. Yes.

12          Q. You didn't bring any health care  
13         experts with you to that meeting?

14          A. No.

15          Q. We talked earlier about what you  
16         said was your agreement, that Mr. Crowley  
17         could work on Cerberus matters during 2002  
18         subject to three conditions: He not get  
19         paid, that there not be a conflict with  
20         Coram, and would not interfere with his  
21         work.

22          A. That is right.

23          Q. Do you know how many such  
24         transactions he actually worked on during

1 2002?

2 A. I do not.

3 Q. Did you ever ask?

4 A. No. I don't think I did.

5 Q. Did you ever ask anyone to ask him  
6 in your behalf?

7 A. No, I don't think so.

8 Q. Do you know the names of any of the  
9 companies?

10 A. He did mention some names. They  
11 meant nothing to me.

12 Q. Did you take any steps to determine  
13 whether in fact they were competitive with  
14 Coram?

15 A. They were not in the same business  
16 as Coram; completely different businesses.

17 Q. How do you know that, sir?

18 A. I know some of these companies.

19 Q. Tell me one you know.

20 A. I can't tell you that offhand.

21 Q. Tell me what business one was in?

22 A. I can't tell you.

23 MR. LEVY: I have no further  
24 questions.

1 MS. KRUGMAN: Can I just  
2 speak with Barry for a minute privately?

3 MR. KIPNES: I will pick up  
4 the speaker.

5 (Off the record.)

6 (Back on the record.)

7 MS. KRUGMAN: I have no  
8 questions.

9 MR. KIPNES: I believe we  
10 are done.

11 MR. LEVY: Is anybody here  
12 serious about trying to take Feinberg's  
13 deposition between now and the hearing?  
14 I'm just asking.

15 MR. BEATIE: What?

16 MR. LEVY: The hearing is on  
17 Monday.

18 MR. GODNICK: You took a  
19 different position. Frankly, Mike and I  
20 have not had an opportunity to discuss  
21 this at length. I'm sure counsel to the  
22 Trustee wants to give it some  
23 consideration. Perhaps, they want to  
24 talk to us.

1                   MR. BEATIE: I'm confident  
2                   the answer is no. No deposition between  
3                   now and Monday.

4                   MR. LEVY: I'm going to  
5                   New York from here to get ready for  
6                   Crowley. I plan to go back on Thursday.  
7                   I would like to do it. Let me know.

8                   MR. KIPNES: Why do you want  
9                   this on the record?

10                  MR. LEVY: To get some  
11                  assurance.

12                  MR. BRESSLER: When did you  
13                  decide that you were not going to take  
14                  his deposition?

15                  MR. LEVY: When I got,  
16                  basically, a lot of answers from  
17                  Mr. Adams.

18                  MR. BRESSLER: So it wasn't  
19                  yesterday or the day before?

20                  MR. LEVY: No.

21                  (Deposition concluded, 4:40  
22                  p.m.)

23

24

1 CERTIFICATION

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3

4 I hereby certify that the  
5 testimony and the proceedings in the  
6 foregoing matter are contained fully  
7 and accurately in the stenographic notes  
8 taken by me, and that the copy is a true  
9 and correct transcript of the same.

10

11

12 MICKEY DINTER  
Registered Professional Reporter

13 The foregoing certification  
14 does not apply to any reproduction of  
15 the same by any means unless under the  
16 direct control and/or supervision of the  
17 certifying shorthand reporter.

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1 SIGNATURE PAGE

2

3

4 I hereby acknowledge that I  
5 have read the foregoing transcript, and  
6 the same is a true and correct  
7 transcription of the answers given by me  
8 to the questions propounded, except for  
9 the changes, if any, noted on the errata  
10 sheet.

11

12

13 SIGNATURE:  
14 DATE:

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1 ERRATA SHEET

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